HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No. 6247 OF 2006

BETWEEN

Nayudu Venkateswara Rao

.....**Petitioner**

And

The District Collector, West Godavari District, Eluru & others

.....**Respondents**

:: O R D E R ::

Counsel for the Petitioner : Shri G. Jaya Prakash Babu

Counsel for the Respondent Nos.1 and 2 : Government Pleader for Revenue

Counsel for the Respondent No.3 : Shri M. Prabhakar

Counsel for the Respondent No.4 : Shri S.V. Bhatt

Counsel for the Respondent No.5 : None

Dated: 03-04-2006

Per G.S. SINGHVI, CJ

This petition filed for issuance of a mandamus to respondent Nos. 1 to 4 to restrain respondent No.5 from doing business in northern portion of property bearing No.1-96 of Krishnampalem village, Devarapalli mandal, West Godavari district, can appropriately be termed as a frivolous piece of litigation, which deserves to be dismissed at the threshold with costs.

A perusal of the record shows that the property in question was owned by Shri Nayudu Abbayya, grant father of the petitioner. After the death of Shri Nayudu Abbayya, the property was divided into two portions and was distributed between his sons, namely, Nayudu Venkanna and Nayudu Chenchanna. The northern portion of the property is said to have come to the share of Shri Nayudu Venkanna and southern portion to the share of the petitioner's father Nayudu Chenchanna. When Shri Nayudu Venkanna wanted to sell his portion of the property, the petitioner filed suit in the Court of I Additional Junior Civil Judge, Kovvur, West Godavari district for restraining defendants No.1 to 5 from selling the property to 6th defendant without first giving option to the plaintiff to purchase the same. The same was registered as O.S.No.875 of 2004.

During the pendency of the civil suit, the petitioner filed the present petition by alleging that Shri Nayudu Venkanna has handed over northern portion of the premises to some person who is running business under the name and style "M/s Jaya Sree Enterprises". In his affidavit, the petitioner has averred that

respondent No.5 is carrying on business of stocking manures, pesticides and cement without obtaining licence/permission from the competent authority. He has further averred that the activities of respondent No.5 are causing nuisance and pollution and has become health-hazard for him. Still further, he has averred that despite repeated representations made to the public authorities, no action has been taken for restraining respondent No.5 from doing business in the disputed premises.

In support of his assertion that respondent No.5 is doing business in violation of the pollution control statutes, the petitioner has relied on letter dated 20.08.2005 sent by Secretary, Gram Panchayat, Krishnampalem to one Shri G.V.V. Satyanarayana Reddy, Proprietor of respondent No.5.

We have heard Shri G. Jaya Prakash Babu, learned counsel for the petitioner. In our opinion, the petitioner has miserably failed to make out a case for restraining respondent No.5 from doing business in northern portion of the property bearing No.1-96 situated in Krishnampalem village, Devarapalli mandal and the writ petition is liable to be dismissed summarily because,

a) he has not placed any material on record of the writ petition to show that his uncle Shri Nayudu Venkanna has leased out the disputed premises to respondent No.5.

b) he has not produced any documentary evidence to show that respondent No.5 is engaged in any trading or business activities prohibited by law;

c) the so-called complaint received by Andhra Pradesh Pollution Control Board, Eluru to which reference has been made in communication dated 20.08.2005 has not been

placed on record of the writ petition. This the petitioner appears to have done to keep the Court in dark about the contents of the complaint and the action, if any, taken by the Board.

During the course of arguments, we repeatedly asked learned counsel for the petitioner to refer to the relevant statutory provisions, which are said to have been violated by respondent No.5 by carrying on trading or business activities in the disputed premises, but he could not draw our attention to any such provision, though he vaguely stated that the activities of respondent No.5 are violative of the Air Pollution Control laws.

We have gone through the provisions of The Air (Prevention and Control of Pollution) Act, 1981 and The Air (Prevention and Control of Pollution) Rules, 1982, but could not find any provision under which a shop keeper can be prevented from doing business of stocking or selling manures, pesticides and cement.

We are further of the view that this petition has been filed by the petitioner with a view to pressurize his uncle Shri Nayudu Venkanna to sell northern portion of the property to him. With a view to prevent Shri Nayudu Venkanna from selling the property, the petitioner first filed civil suit in the Court of I Additional Junior Civil Judge, Kovvur. We have not been apprised whether he has applied for temporary injunction. However, this much is clear that after having failed to get the desired relief from the civil Court, he filed this petition with a view to coerce his uncle to agree to settle the matter on his own terms. In our view, the power conferred upon this Court under Article 226 of the Constitution of India cannot be allowed to be misused for achieving private ends and

private goals.

For the reasons mentioned above, the writ petition is dismissed. For filing the frivolous litigation like the present one, the petitioner is saddled with costs of Rs.5,000/-. He shall deposit the amount of costs with Andhra Pradesh State Legal Services Authority within one month from today.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

03-04-2006
ksld